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| APPLICATION NO.  | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.         | CONFIRMATION NO. |
|--|-------------|----------------------|-----------------------------|------------------|
| 09/763,679   | 05/15/2001  | Ulrich Reiners       | K&W 305-WCG                 | 8692             |
| 7590 11/20/2003  |             |                      |                             |                  |
| Norris McLaughlin & Marcus<br>220 East 42nd Street<br>30th Floor<br>New York, NY 10017 |             |                      | EXAMINER<br>CHANG, VICTOR S |                  |
|  |             |                      | ART UNIT<br>1771            | PAPER NUMBER     |

DATE MAILED: 11/20/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

|                        |                                      |                                       |  |
|------------------------|--------------------------------------|---------------------------------------|--|
| <b>Advisory Action</b> | <b>Application No.</b><br>09/763,679 | <b>Applicant(s)</b><br>REINERS ET AL. |  |
|                        | <b>Examiner</b><br>Victor S Chang    | <b>Art Unit</b><br>1771               |  |

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 27 October 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY** [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☒ A Notice of Appeal was filed on 27 October 2003. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_.

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: see attached NOTE.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 1-17 and 19-21.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☐ Other: \_\_\_\_\_

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**NOTE**

1. Applicants' proposal to amend the Specification places the Application in better form for appeal by materially reducing or simplifying the issues for appeal is persuasive. As such the amendment has been entered.

2. Applicants' After Final Remarks has been carefully reconsidered. Applicants' summary statement indicates that "the application pertains to a novel packaging material comprising a polystyrene foam based layer" (Remarks, page 3, top paragraph) appears erroneous. The Examiner notes that claim 1 is clearly directed to a multilayer film comprising a base layer of foamed propylene homopolymers, etc.

3. Applicants' argument that "it would be impossible to arrive at Applicants' film from Laurent's teaching, without radically departing from the totality of Laurent's teaching, and the Examiner has not shown any reason why those skilled in the art would do this" (Remarks, page 5, second paragraph) is not persuasive. The Examiner repeats (see Paper No. 8, page 3, bottom paragraph) that Laurent expressly teaches that it is known art that "Depending on the composition and thickness of the coating film, this film may also serve as a further means for increasing the stiffness" (column 1, lines 27-32), and in Fig. 3 Laurent's coating film clearly encompasses the layer B of the instantly claimed invention, Applicants' argument to the contrary notwithstanding.

4. Regarding Applicants' argument that the "quoted language pertains to the thickness of the coated film only, and has nothing to do with maintaining a total thickness of the foam layer + the layer next to it within a specific range, or with

maintaining the ratio of the thicknesses of the foamed layer and the one next to it within a particular range" (Remarks, page 5, bottom paragraph), the Examiner notes while in Fig.3 Laurent teaches additional barrier layer and sealing layer, it would have been obvious to one of ordinary skill in the art to optimize the stiffness of the multilayer by increasing the thickness of the bonding layer, motivated by the desire to minimize the material cost, since it is well known that barrier and sealing polymers are generally more costly than the polypropylene used for the bonding layer.

5. If further prosecution, i.e., a CPA or RCE, is contemplated, the Examiner would like to suggest that in claim 1, line 5, the term "polyolefin" be replaced with, for example, --the propylene based polymers--, so as to clarify the claimed element, which phrase should also be introduced in the preceding line segment so as to have proper antecedent basis.